

IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ROBERT A. DUFF
12637 Chapel Road
Clifton, Virginia 20124-1717

Plaintiff,

V.

) Case No. 1:19-cv-1365

UNITED STATES OF AMERICA

Serve:

United States Attorney
For The Eastern District Of Virginia
Justin W. Williams United States Attorney's Building
2100 Jamieson Ave
Alexandria, VA 22314

AND

Via Registered or Certified Mail
Attorney General of the United States at
District of Columbia
US Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

COMPLAINT

COMES NOW, ROBERT A. DUFF, by and through Counsel, and for his Complaint against the UNITED STATES OF AMERICA (hereafter referred to as the “United States of America” or the “IRS”), states as follows:

STATEMENT OF THE CASE

1. The issue in this case is whether the IRS properly denied certain deductions claimed by Robert A. Duff (“Plaintiff” or “Taxpayer”) and assessed certain accuracy related penalties against

the Taxpayer in his income tax return form 1040 for tax year 2013. Taxpayer is due a refund from the IRS for the 2013 tax year in the amount of \$86,706.69, plus penalties, interest and other relief as requested herein.

THE PARTIES

2. Robert A. Duff (“Plaintiff” or “Taxpayer”) is an individual who resides at 12637 Chapel Road, Clifton, Virginia 20124-1717.

3. The United States of America (“United States” or “IRS”) is the defendant herein acting through the federal government for the United States of America.

JURISIDCTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1346(a) because this case is a civil action against the United States of America for the recovery of an internal revenue tax erroneously assessed and collected, and a penalty collected without authority. Taxpayers are entitled to judicial review under 26 U.S.C § 7422 of the Internal Revenue Code, which permits review of any agency denial of a claim for a refund.

5. Venue is appropriate in this District pursuant to 28 U.S.C. § 1402(a)(1) because the Taxpayer resides in the in the Eastern District Of Virginia.

6. Taxpayer has standing to bring this claim in this Court, and this dispute is ripe for this Court’s review.

STATEMENT OF FACTS

7. Taxpayer filed a Form 1040 with his wife VICKIE L. FRISBY (they are now divorced) for 2013 which was processed by the IRS on July 25, 2016. Ms. Frisby unsuccessfully filed for innocent spouse relief, which was denied on November 1, 2018. However, all tax payments made which are subject to the refund claim made herein were made by Plaintiff and therefore he

is the real party in interest. To the extent that Ms. Frisby needs to be joined herein, Taxpayer asserts that he is acting in her best interests in asserting this claim. Further, this filing herein can be ratified by Ms. Frisby in a timely manner.

8. On his return, Taxpayer claimed various deductions for state and local taxes, and real estate taxes, charitable contributions and gambling losses.

9. The IRS audited said return and improperly denied many of these deductions.

10. After said audit, Taxpayer has paid all of the subject taxes due as a result of the audit of tax year 2013.

11. The Taxpayer then filed a refund claim for tax year 2013, and Taxpayer filed such claim without prejudice to seeking a full refund for all overpayments should litigation be necessary.

Therefore, taxpayer submitted a claim for refund to the IRS for 2013 in the amount of \$93,249.70.

12. The IRS reviewed said claim, and ultimately through the IRS Appeals Office, they partially disallowed such refund claim by Notice dated September 23, 2019, a copy of which is attached as Exhibit "A."

13. The IRS denied \$86,706.69 of said claim based upon it improperly denying proper deductions, specifically including a denial of a \$100,000.00 charitable deduction by Taxpayer in 2013 paid to Diamond Dream Foundation, Inc. *See* Exhibit "B", attached hereto.

14. Taxpayer has exhausted all administrative remedies prior to filing this action.

15. In excess of 180 days has now passed since said claim for refund was filed and not fully accepted.

16. Taxpayer has made repeated unsuccessful attempts to contact the IRS for a status report on the Taxpayer's full request for a refund, but the IRS has refused, neglected and failed to

refund all said monies to Taxpayer and has improperly claimed excessive tax, penalties and interests are still due from the taxpayer through its various notices and demands for payment.

17. Taxpayer is due a full refund from the IRS for their 2013 tax year in the amount of \$86,706.69.

COUNT I – CLAIM FOR REFUND

18. Taxpayers re-allege paragraphs 1 – 17 as if set for fully herein.

19. The IRS improperly denied certain deductions and losses claimed by Taxpayer, increased the tax due commensurately and assessed certain interest and penalties on the Taxpayers for their 2013 tax year in violation of Internal Revenue Code which permit a taxpayer to deduct contributions and other itemized deductions and losses.

20. Accordingly, Taxpayer is due a refund from the IRS for their 2013 tax year in the amount of \$86,706.69 and other relief as appropriate.

PRAYERS FOR RELIEF

WHEREFORE, Robert A. Duff, respectfully requests that this Court award the following relief against the United States Of America:

- a. Enter judgment for Taxpayer and against the United States in the amount of \$86,706.69; and
- b. Direct the United States to refund to Taxpayers \$86,706.69, and make all other proper adjustments on taxpayer's income tax for 2013, so that all penalties and interest for 2013 are deleted and otherwise properly adjusted;
- c. Direct the United States to make all other adjustments and corrections on Taxpayer's income tax account for tax year 2013 so that all penalties, and interest

are deleted or otherwise properly adjusted and enjoin the IRS from sending further collection notices and/or engaging in further collection activities for tax year 2013;

- d. Award Taxpayers its expenses, costs, fees and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys' fees; and
- e. Provide such other and further relief as the cause may require.

Respectfully Submitted,
Robert A. Duff
By Counsel

/s/ Jay Ian Igiel, Esq.

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